PUBLIC PROSECUTOR

v.

TAI YOU CHOY

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CRIMINAL TRIAL NO. 2 OF 1980]
12 SEPTEMBER 1981

CRIMINAL PROCEDURE: *Section 304 Penal Code - Causing death or intention of causing bodily injury - Plea of mitigation.*

The accused stabbed the deceased with a sharp bearing scrapper causing the latter's death. The injury was caused in a sudden fight and in a heat of passion without the accused taking any undue advantage, or acting incruel manner. The prosecution charged the accused under s. 304 of the Penal Code. The accused admited the facts as adduced by the prosecution. He was sentenced to 8 years imprisonment. He now appeals against the said term of imprisonment.

Held:
After weighing the circumstances of the case and the record of previous convictions of the accused, the Court was satisfied that a sentence of 8 years' imprisonment was most appropriate.

Legislation referred to:
Penal Code, ss. 302, 304

For the prosecution - John Louis O'Hara
For the accused - T.S. Chong

JUDGMENT

Mohd. Yusof Abdul Rashid J:

Tai You Choy was originally charged under s. 302 of the Penal Code for causing the death of one Tan Kueh Sua but when he was produced before me, the learned Deputy Public Prosecutor amended the charge to an offence under s. 304 of the Penal Code, for committing culpable homicide not amounting to murder by causing the death of the said Tan Kueh Sua. To this reduced charge, Tai You Choy pleaded guilty.

Briefly the facts were:

Tai You Choy, the accused, and Tan Kueh Sua, the deceased, were known to each other in that the deceased was one of the co-owners of the Lovers Bar while the accused was employed at the said Bar as a Bar Captain. On 7 April 1979 about 1.00 a.m. after the Bar had closed for the night, the accused approached the deceased and requested for an advance of RM50. The deceased explained that he had no authority to give the advance. The accused then asked the deceased whether the deceased would permit a friend of the accused named Ah Seng to pass the night with the accused at the Bar. In reply the deceased abused the accused and threatened to dismiss him from employment if the accused chose to do as he pleased. This abuse and threat were made in the presence of Ah Seng, the accused's friend, as a result of which the accused felt humiliated and shamed. In retaliation the accused tried to assault the deceased who ran up to the first floor in escape. The accused went in pursuit. When the accused came face to face with the deceased on the first floor, the deceased had

armed himself with an iron pipe, with which the deceased swung at the accused but missed. The accused stabbed the deceased with a sharp bearing scrapper on the chest which ruptured the deceased's heart. In consequence, the deceased died. The prosecution contended that in inflicting the stab wound, the accused intended to cause bodily injury on the deceased and that the bodily injury was sufficient and that the bodily injury was sufficient in the ordinary course of nature to cause death. However since the injury was caused in a sudden fight and in a heat of passion without the accused taking any undue advantage or acting in a cruel manner, the prosecution had deemed fit to charge the accused under s. 304 of the Penal Code. The accused was found guilty and convicted when he admitted the facts adduced by the prosecution. He was sentenced to eight years' imprisonment with effect from the date of arrest. Now the accused appeals against the said term of imprisonment.

Section 304 of the Penal Code consists of two categories of culpable homicide carrying different maximum terms of imprisonment. For an offence where the Court is satisfied that an accused person has committed the same with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, the maximum punishment is twenty years but where such offence was committed and the Court is satisfied that the act done was with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause such bodily injury as is likely to cause death then the maximum punishment is ten years, or with fine, or with both.

In the instant case, the accused had used a sharp bearing scrapper and had inflicted the stab wound on the chest where it was natural for a reasonable man to know that the vital organs of a human being are situated. The wound would naturally have been fatal if the weapon used to inflict the wound were to perforate the lung or rupture the heart. In the circumstances I found that the offence under the first arm of s. 304 of the Penal Code had been committed since I found that the accused had inflicted the wound with the intention of causing such bodily injury as is likely to cause death.

The learned counsel for the accused urged me to be lenient to the accused and ably and persuasively put forward several mitigating factors in favour of the accused. However the learned Deputy Public Prosecutor submitted the accused's record of previous convictions and urged me to impose a deterrent sentence. The record of previous convictions which the accused admitted showed that:

(a) On 21 November 1970 the accused was convicted and sentenced to 3 years' imprisonment for an offence of armed robbery and sentenced to 4 years' imprisonment and 3 strokes of the rotan for an offence of being in possession of offensive weapon. The sentences to run concurrently;

(b) On 18 November 1973 the accused was convicted and sentenced to one year's imprisonment and 3 strokes of the rotan for an offence of attempted extortion; and

(c) On 11 December 1976 the accused was convicted and sentenced to one year's imprisonment and one stroke of the rotan for an offence of being in possession of offensive weapon.

Having weighed the circumstances of the case, the plea in mitigation, the record of previous convictions and public interest, I was satisfied that a sentence of 8 years' imprisonment with effect from the date of arrest was most appropriate.

Also found at [1982] CLJ 78